

CONFIDENTIAL

March 8, 2012

Mr. Jonathan Caniezo
Administrative Supervisor 2


RE: Notice of Intent to Demote

Dear Mr. Caniezo:

In accordance with Personnel Policies for Staff Members (PPSM) Policy 62. Corrective Action, [Exhibit 1] this is a Notice of Intent to Demote you from an Administrative Supervisor 2 to a Lead Senior Storekeeper, job code 5060C. [Exhibit 2] PPSM 62.C. allows for corrective action without a prior letter of warning "when corrective action is the result of performance or conduct which an employee knows or reasonably should have known was unsatisfactory."

Pursuant to Personnel Policies for Staff Members 62.D, the materials on which corrective action are based are attached to this Notice. Sections of investigative reports that address other employees or are not relevant to this corrective action have been deleted from the attached materials. In addition, names have been redacted to protect privacy and preserve the confidentiality of whistleblowers and witnesses.

This Notice of Intent to Demote is based on your failure to manage University resources and personnel appropriately. You also exhibited inappropriate behavior in the workplace. In your position as RES Administrative Supervisor 2, this was performance that you reasonably should have known was inappropriate and unsatisfactory.

Some specific examples of this failure are:



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3. You created, contributed to, participated in, and did not counteract the development of an unprofessional and inappropriate climate within the Receiving unit.

Specifically you addressed employees whom you supervised with vulgar epithets, and you permitted and participated in the common use of obscenities along with others in the workplace. [Exhibit 5, Title IX Report, 12/2011] The four email messages you sent to one of your employees, below, are examples:

"You bitches left early and didn't even close my door! What the fuck!"

"Having a nice circle jerk?"

"Bring fuckin the Bancroft key tomorrow!"

"Droppin a deuce? [bowel movement] What the fuck!"
[Exhibit 6, copies of text messages]

The reports of both the Title IX Office and the Office of the Human Resources-Employee Relations reveal that when communicating with each other, it was commonplace for members of the Receiving Unit to use obscenities. "We do use a lot of profanities with each other..." was a typical comment of employees who were interviewed. This aspect of the work environment was noted by the RES Director, who described the Receiving Unit environment in this way: "Its blue collar [lot of] language joking, teasing, swearing a lot." You explained: "Most of us are young guys . . . Insults/teasing fly back and forth and there is a lot of curse words." You said there was an understanding within the group that . . . "if any outsiders or customers enter the shop, the swearing and inappropriate conversations would stop." You made a similar acknowledgement to the Title IX investigators. According to the Title IX investigation, "Caniezo admitted that at times the language among stockroom staff was a bit "rough." He said everyone used profanity (e.g., 'shit', 'fuck,' and 'bitch') . . . " (see Exhibit 1, HR Report, pp. 7, 9, and Exhibit 5, Title IX Report, p 12)



Jonathan Caniezo, Intent to Demote, March 8, 2012



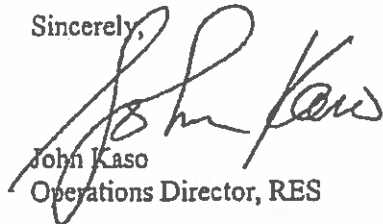
Jonathan Caniezo, Intent to Demote, March 8, 2012

[REDACTED]

These multiple and varied instances of your failure to appropriately perform basic functions of your management position are the basis for the intent to demote you from your position as Administrative Supervisor 2. Collectively these varied failures lead to the conclusion that you are unable or unwilling to perform as a manager at an acceptable level.

You have the right to respond to this Notice of Intent to Demote either orally or in writing, within 8 calendar days from the date of issuance. Please direct your response to Reviewer Eric Anglim, Assistant Director, Business Services, (510-409-8908, eanglim@berkeley.edu)

Sincerely,



John Kaso
Operations Director, RES

cc: Associate Vice Chancellor, Robert Price
Employee Relations Consultant, Vicki Oppenheim
Eric Anglim, Reviewer
Personnel File

Attachments:

Exhibit 1, Personnel Policies for Staff Members
Exhibit 2, Job Description Template, Lead Senior Storekeeper
Exhibit 3, HR Report dated 12/6/11
Exhibit 4, Audit Report dated 12/9/11
Exhibit 5, Title IX, Report of Investigation and Findings, December 2011
Exhibit 6, TEXT messages
Exhibit 7, Email dated 12/20/2010
Exhibit 8, Letter from Promega and gift card
Exhibit 9, Bulletin No: BUS-43 REV
Exhibit 10, Photographs
Exhibit 11, Email message, 10/17/2011
Proof of Service

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PROPERTY MANAGEMENT
3200-E REGATTA BLVD., #5604
RICHMOND, CALIFORNIA 94804-6414

FACSIMILE TRANSMISSION: (510) 643-7917

May 21, 2012

Mr. John Kaso
Operations Director
University of California, Berkeley
Research Enterprise Services
204 Stanley Hall, MC #3220
Berkeley, CA 94720-3220

Re: Notice of Intent to Demote Jonathan Caniezo

Dear John,

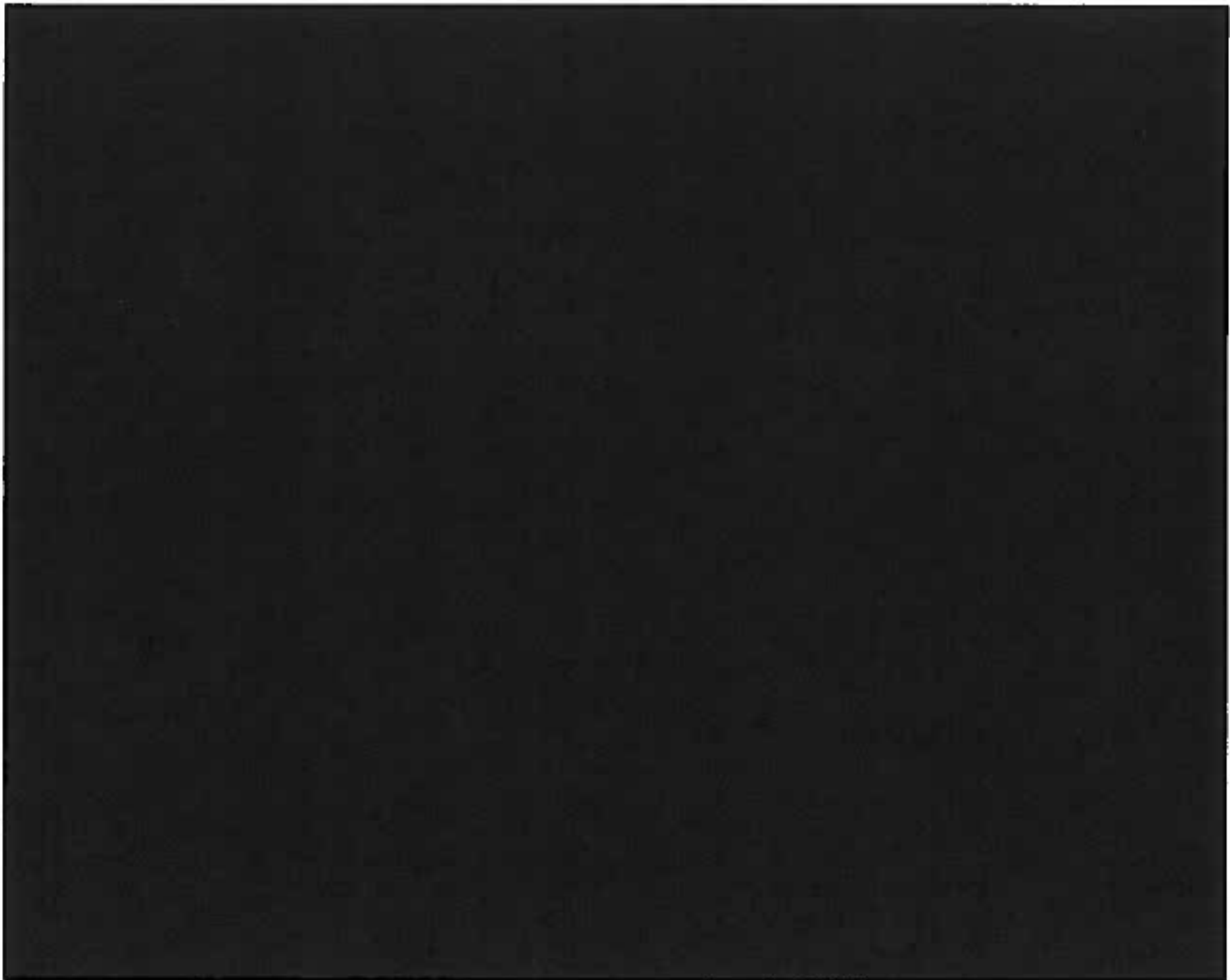
I have received correspondence dated April 5, 2012 from Mr. Caniezo, which is his written response to the University of California, Berkeley, Research Enterprise Services' (University) Notice of Intent to Demote him, dated March 8, 2012. Since receiving his response, I have carefully reviewed the University's letter to Caniezo, the University's related documentation, Caniezo's response and documentation, and conducted some follow-up data gathering associated with the University's respective points and his response. I am including with this written Skelly review, copies of the Notice of Intent, the background documentation that accompanied the notice, Caniezo's written response and the documentation he provided. Based upon all of the information, I am in support of the University's proposed action to demote Caniezo for the following reasons:

1. At the onset of his response to the University's Notice of Intent to Demote, Caniezo states that he was unaware he was being investigated for complaints against him until he received the March 8, 2012, notice. However, the University's redacted notes of interviews with Caniezo prior to the transmittal of the March 8 notice contain his response to claims of a hostile work environment within the unit under his charge. One specific note reads, "As for allegations that Caniezo bullies employees, he responded "I don't bully the staff, . . ." In the same note, there is reference to an additional allegation that he called an employee by a demeaning term and that he responded he did not recall saying it in a serious manner, but only a joking manner. Caniezo's answer referencing the allegations demonstrates his being aware of them prior to the Notice of Intent. Further, the Title IX interviewers report that Caniezo was specifically advised during the October 7, 2011, interview that complaints alleging inappropriate behavior were filed against him.

2. In his response, Caniezo stated that the campus violated his due process rights under the Title IX policy by the actions it took. I do not find that the University violated Caniezo's due process rights because: (a) the campus relies upon PPSM Policy 62, which provides for taking disciplinary action by reason of his performance or conduct Caniezo should reasonably have known was unsatisfactory (PPSM Policy 62, paragraph C supports the University's action without the need of a written warning); and (b) the provision for this Skelly review is part of that due process policy. Due process includes the following four elements:

- Notice of proposed action (commonly referred to as the notice of intent)
- Reasons for the proposed action
- A copy of the charges and materials upon which the proposed action is based
- A right to respond (orally or in writing) to a management authority who did not participate in the decision to issue the notice of intent.

Each of the above has or is currently taking place, providing for due process.



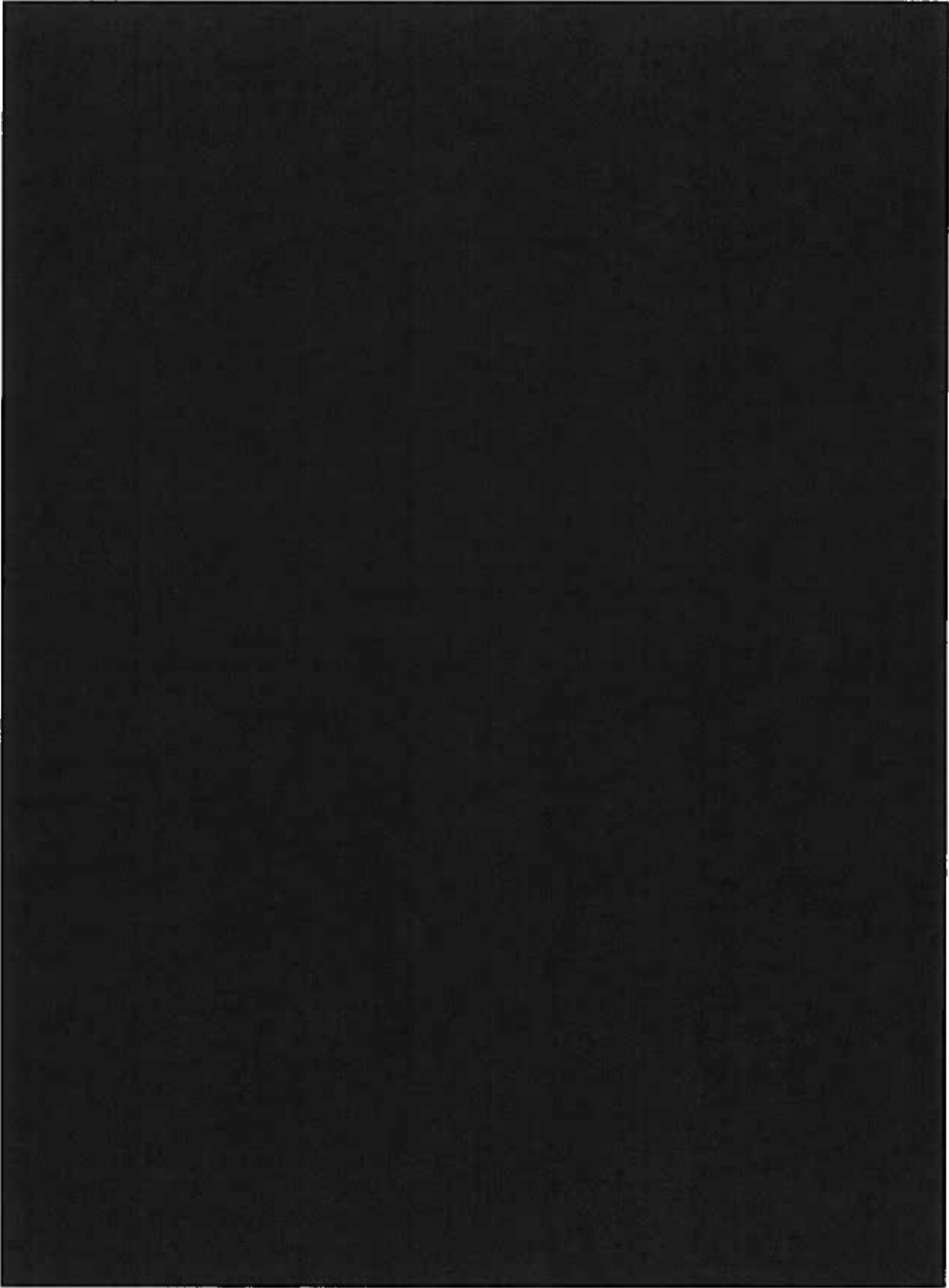
4. In the University's point #3, the University finds that Caniezo created, contributed to, participated in, and did not counteract the development of an unprofessional and inappropriate climate within the Receiving unit. The University provided copies of communications sent to staff that included profanity.



Caniezo's response stated that the University failed to indicate when the alleged inappropriate communication occurred and that he believed it was old and had been resolved circa January 2011 via conversations with [REDACTED] Caniezo further referenced [REDACTED] having in August 2011, told staff in response to a complaint that the environment cited above had been changed many months prior.

The University's documentation supporting its finding includes four text messages dated October 11, 2011 that include profanity and demeaning terms. These occur long after the January 2011 date Caniezo referenced as when the unprofessional environment was addressed and resolved, and also after the August 2011 date when [REDACTED] reportedly advised staff that the environment had changed, showing that the environment had not changed, at least in this respect.

Also, the University requires all staff in managerial positions take and complete on-line Sexual Harassment and Ethics training. University records show that Caniezo completed the UC Ethical Values and Conduct training on August 4, 2010. That training references the University of California Statement of Ethical values, which states, in part, "We will respect the rights and dignity of others." Caniezo completed the training prior to the text messages that included reference to the recipient(s) in the vernacular used for a female dog, which can be deemed inappropriate and demeaning to one's dignity. Further, campus records also show that Caniezo completed the Sexual Harrassment training on August 2, 2011. As a result, he was aware of the inappropriateness and his accountability in using profane language and demeaning terms in his communications.







In conclusion, because of the preponderance of proof provided by the University and Caniezo's lack of proof to refute the University's allegations, I support and find the University's proposed action of demoting Caniezo to be appropriate. I further find that you may proceed with the proposed demotion. It is my opinion that Caniezo's accepting compensation from Promega, his inappropriate use of University resources in approving overtime when employees were inactive earlier in the day, and despite the Sexual Harrassment and Ethical Values training he received, his subsequent repeated use of demeaning terms and language in communicating with staff were egregious enough to warrant the demotion.

Sincerely,



Eric P. Anglim
Director, Property Management & Library Bindery



Cc: Robert Price, Associate Vice Chancellor, VC-Research (w/out Enclosures)
Vicki Oppenheim, Employee Relations Consultant, Human Resources (w/out Enclosures)

Enclosures: (2) Notice of Intent and University Documentation
Caniezo Response to Notice of Intent and Caniezo Documentation

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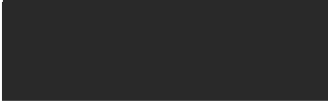
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PHONE: 510-666-3310
FAX: 510-666-3328

May 25, 2012

Mr. Jonathan Caniezo



Re: Demotion

Dear Mr. Caniezo,

I have heard back from Reviewer Eric Anglim regarding the Notice of Intent to Demote dated March 8, 2012. Reviewer Anglim supports the demotion. His report is enclosed.

In accordance with Personnel Policies for Staff Members (PPSM) Policy 62-Corrective Action, you are demoted from your Administrative Supervisor 2 position to a Lead Senior Storekeeper, job code 5060C at 100 percent time, effective June 1, 2012. This is a non-exempt position and is in the AFSCME Service bargaining unit. Your salary is \$64,572.00 per year. I will be your supervisor.

Pursuant to the most recent medical note we have placing you off work through May 31, 2012, you are instructed to report to work on June 1, 2012 at 9:00 AM in the Chase Building, 2150 Shattuck, 10th floor, room 1041, and to meet with me. I will meet with you to discuss your new job description; performance expectations, work schedule, your new non-exempt status, and answer any questions you may have.

Please review the attached job description and PEM form prior to the meeting.

You may consult PPSM Policy 70 – Complaint Resolution for your appeal rights.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kaso".

John Kaso
Operations Director, RES

cc: Associate Vice Chancellor, Robert Price
Employee Relations Consultant Vicki Oppenheim
Personnel File

Attachments:

Lead Senior Storekeeper job description
Eric Anglim May 21, 2012 Review letter, with attachments
Proof of Service